

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-219176.2

DATE: August 13, 1985**MATTER OF:**

Pee Dee Area Community Action Agency/
The Southern Farm Development Project--
Request for Reconsideration

DIGEST:

GAO will not reopen a protest file which was closed because more than 7 working days elapsed before the protester filed comments on the agency report in our Office after the protester received a copy of the report.

Pee Dee Area Community Action Agency/The Southern Farm Development Project (Pee Dee) request that we reopen our file on its protest concerning the award of a contract by the Farmers Home Administration, United States Department of Agriculture (FmHA), under solicitation No. FmHA-85-31. We received the agency report on this matter on July 3, 1985, and closed our file on July 19, 1985, because Pee Dee had not filed a statement of continued interest in the protest within 7 days after receipt of the agency report. We decline to reopen the case.


Pee Dee asserts that it received the agency report on July 10, 1985, and mailed its comments to our Office on July 16, less than 7 working days thereafter. Pee Dee also points out that our acknowledgment of its protest stated that the agency report due date was July 25 and, therefore, it argues that comments were not due until 7 working days after this date.

Pee Dee has misconstrued the effect of the acknowledgment letter indicating the report due date. The letter does indicate that July 25 is the agency report due date and states that if the protester has not received the report by this date, it must notify our Office, otherwise we will assume receipt. However, the letter also states that the protester is required within 7 working days of receipt of the report to submit written comments or advise our Office that it wishes to have the protest decided on the existing record, otherwise we will close our file. This language reflects the requirement under our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1985), that failure of the protester to file such comments within 7 working days will

result in dismissal of protest. The regulation makes it clear that the relevant date is that of actual receipt, not the final report due date, and since our regulations are published in the Federal Register, protesters are charged with constructive notice of their content. International Development Institute, 64 Comp. Gen. 259 (1985), 85-1 C.P.D. ¶ 179. Thus, Pee Dee was on notice of its obligation to file comments in our Office within 7 working days of receipt of the agency report.

Pee Dee acknowledges that it received the FmHA report prior to the due date. However, contrary to Pee Dee's assertion that it received the report on July 10, FmHA records contain a return receipt signed by the protester which shows that Pee Dee actually received the report on July 9. Under our requirement to file comments within 7 working days, Pee Dee was required to file its comments by the close of business on July 18. We closed the file on July 19, after ascertaining that Pee Dee's comments had not been filed. Our Bid Protest Regulations, 4 C.F.R. § 21.2(b), define "filed" as receipt of a submission in our Office. The fact that Pee Dee mailed its comments within 7 working days after receipt of the agency report, does not require reversal of the dismissal since the comments were not received in our Office until after July 18.

Our procedures are intended to provide for expeditious consideration of objections to procurement actions without unduly disrupting the government's procurement process. Reopening the file in Pee Dee's protest at this time would be inconsistent with this purpose, therefore, we will not reopen the case.

for 
Harry R. Van Clev
General Counsel